



STATE OF IDAHO  
DEPARTMENT OF  
ENVIRONMENTAL QUALITY

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Dirk Kempthorne, Governor  
C. Stephen Allred, Director

March 27, 2001

Jerry Lyle, Assistant Manager  
U.S. Department of Energy  
Idaho Operations Office  
850 Energy Drive  
Idaho Falls, Idaho 83401-1563

RE: Pit 9 - Response to Department of Energy's Invocation of Dispute

Dear Mr. Lyle:

As Idaho DEQ's representative to the Dispute Resolution Committee, I am responding to Kathleen Hain's letter of March 16, 2001, invoking dispute over DEQ's denial of DOE's request for extension of deadlines for all remaining phases of the Pit 9 project. This letter also responds to Ms. Hain's letter of February 27, 2001, discussing issues related to the comprehensive Remedial Investigation and Feasibility Study (RI/FS) for Waste Area Group 7 that are integrally related to this dispute.

DOE's written statement of dispute does not demonstrate good cause for schedule extensions ranging from 88 to 149 months for submittals for the Pit 9 project, which DOE has requested under the Federal Facility Agreement and Consent Order (FFA/CO).

The 1997 Agreement to Resolve Disputes and subsequent agency correspondence on this issue also lead to the conclusion that Pit 9 commitments cannot be properly discussed in a vacuum separate from the comprehensive RI/FS for Waste Area Group 7, which the Pit 9 commitments were intended to support. Resolving our differences over the Pit 9 project is essential to developing a supportable RI/FS and ultimate decision for Waste Area Group 7.

The agencies agreed to perform additional characterization activities and treatability studies as part of the comprehensive RI/FS, independent of the Pit 9 process, under the 1998 OU 7-13/14 RI/FS Work Plan. However, they continued to view information from the Pit 9 project as necessary to support the RI/FS for the larger buried waste area. Indeed, if the State had not viewed the information from the Pit 9 project as essential to supporting the RI/FS and subsequent decision, the State would not have continued to invest its resources in Pit 9 as an interim action and technology demonstration project.

The Agreement to Resolve Disputes reaffirmed the need to integrate Pit 9 waste characterization and retrieval information into the comprehensive RI/FS for the larger operable unit by establishing new deadlines for both Pit 9 and the comprehensive RI/FS. It also required

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the agencies to revisit the scope of work for the comprehensive RI/FS if Pit 9 information was not available in a timely manner.

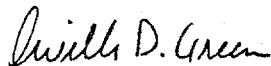
Thus, a dispute over the Pit 9 project must be discussed in the context of the RI/FS for Waste Area Group 7. DOE's letter of February 27, 2001 did not satisfactorily address the State's identified needs for a supportable RI/FS and subsequent decision for Waste Area Group 7. Notably, DOE has not proposed options for replacing information that would not be available from Pit 9 with the schedule delay. DOE has also unilaterally curtailed or postponed some of the characterization activities and treatability studies that were supposed to be performed under the 1998 Work Plan for the larger operable unit.

In addition, I understand state representatives have repeatedly made DOE aware of DOE's transuranic waste obligations under the 1995 court settlement. The settlement requirement for DOE to remove "all transuranic waste now located at INE[E]L..." includes waste in the Subsurface Disposal Area defined as transuranic under the court settlement. The issues in dispute require a discussion of DOE's obligation to remove buried transuranic waste.

Our technical and mid-level management teams have made numerous unsuccessful attempts to address the interrelated issues of the Pit 9 project and the RI/FS for the larger buried waste area. For this reason, as well as the extent to which fundamental policy issues are involved, I recommend this dispute be immediately elevated to the Senior Executive Committee for resolution.

To expedite the dispute resolution process, we need to agree on available dates for the SEC to convene and an agenda for the meeting. I understand Steve Allred has provided his near-term available dates to you and your staff. Please contact Rosie Alonzo at (208) 373-0240 to confirm a meeting date that will work for DOE. I will contact you and Mike Gearheard of EPA soon to develop the agenda for the meeting.

Sincerely,



Orville D. Green  
Administrator  
Waste Management & Remediation Division

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cc: Michael Gearheard, USEPA  
Steve Allred, DEQ  
Dean Nygard, DEQ  
Kathleen Trever, INEEL Oversight